The opinion in support of the decision being entered today is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte MASAHIRO NAKANO, TSUTOMU AKIYAMA, TADAMASA KITSUKAWA, and SHIGEHARU KONDO

Appeal 2007-0580
Application 09/839,000[1]
Technology Center 2600

Decided: September 24, 2007

Before LEE E. BARRETT, JOSEPH L. DIXON, and MAHSHID D. SAADAT, *Administrative Patent Judges*.

BARRETT, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the Final Rejection of claims 1 and 3-22. We have jurisdiction pursuant to 35 U.S.C. § 6(b).

We affirm-in-part.

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[1] Application for patent filed April 21, 2001, entitled "System and Method for Interactive Television."

BACKGROUND

The claims are directed to an interactive television (ITV) capable of presenting both TV channels and "virtual channels." A virtual channel corresponds to a Web page that is given a number like a conventional TV channel which may be selected like a regular TV channel.

Claim 7 is illustrative:

7. An interactive television (ITV) comprising:

a housing;

a television tuner in the housing;

a microprocessor;

a user input device communicating with the microprocessor; and

a memory system communicating with the microprocessor, the memory system storing user data, the user data being at least partially based on signals received from the user input device, wherein the memory system further stores virtual channels displayable on the ITV, and the microprocessor accesses the memory to display a virtual channel in response to user input, a consumer profile being used to tailor virtual channels.

THE REFERENCES

Greer	US 5,978,828	Nov. 2, 1999
Norsworthy	US 6,144,402	Nov. 7, 2000
Nobakht	US 6,745,223 B1	Jun. 1, 2004 (filed Jan. 26, 2000)

THE REJECTIONS

Claims 7-12 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Nobakht.

Claims 1, 3, 4, 6, 15-20, and 22 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Nobakht and Greer.

Claims 5 and 21 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Nobakht and Greer, further in view of Norsworthy.

Claims 13 and 14 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Nobakht and Norsworthy.

DISCUSSION

Claims 7-14

The limitation at dispute in claim 7 is "a consumer profile being used to tailor virtual channels."

Appellants argue (Br. 4):

> Nobakht et al. nowhere teaches tailoring virtual channels to a consumer profile as recited in claim 7. Instead, user validity is tested for access to a virtual channel table but the table itself, and the channels therein, are not established in accordance with user profiles.

The Examiner reads the consumer profile on Figure 3A, which shows two user channel tables in an ITV (Answer 10). Parental control codes allow a parent to restrict the Internet sites that can be accessed by a young user (col. 5, l. 63 to col. 6, l. 28). Alternatively, the Examiner reads the channel profile on Figure 5A, which show parental guidance fields to rate the content of the virtual channels. The user terminal administrator (i.e., a

parent) may restrict access to cites rated "PG" or "G" or the server may use the parental guidance codes in conjunction with the user age stored on a smart card to limit authorized channels (col. 9, ll. 5-29).

Appellants argue that the Examiner's conclusion that "tailoring virtual channels to a consumer profile is equivalent to restricting consumers from viewing virtual channels" is not supported (Reply Br. 1). It is also argued that the Examiner does not contend that Appellants' argument in the Brief is wrong (Reply Br. 1).

We agree with the Examiner's findings. A "consumer profile being used to tailor virtual channels" is interpreted to mean that there is information in a profile that determines which virtual channels a user receives. Nobakht discloses that a parent can determine which channels can be viewed by a young user, as noted by the Examiner, which is a profile. In addition, Nobakht discloses that users can have channel table options. "For example, user 'JOE JOCK' may subscribe to a premium package that provides access to sports-based Internet sites. In addition, a young user may only be authorized to download pre-defined children's sites and/or educational sites from master channel table 112-a." (Col. 9, l. 65 to col. 10, l. 2). That is, the channel table type in Figure 5(B) is a consumer profile used to tailor virtual channels. As to Appellants' argument that the Examiner did not deny the arguments were wrong, the Examiner's reference to portions of Nobakht for the consumer profile in response to Appellants' argument indicates that the Examiner considers the argument to be wrong. The rejection of claims 7-12 is affirmed.

The obviousness rejection of claims 13 and 14 is not separately argued and, thus, these claims fall together with the claims on which they depend. The rejection of claims 13 and 14 is affirmed.

Claims 1 and 3-6

The limitation at dispute in claim 1 is "in the event of an update [of the virtual channels], only updated portions of a Web page corresponding to the virtual channel are downloaded." The Specification describes that "[i]n the event of an update, however, the logic moves to block 60 to download the entire new Web page or pages that establish the virtual channel or, more preferably to download only the changed portions thereof (page 11).

Appellants argue that Greer does not download only changed portions of web pages (Br. 4). "Instead, it generates an alert when a web [page is] changed beyond a threshold, but the entire page is downloaded, col. 3, lines 18-19" (Br. 4). It is argued that "Claim 1 requires that ***only*** the updated portions of the page be downloaded all the time" (Br. 5).

The Examiner states that "Greer discloses that a user can establish in the event of an update to a Web Page via a user changeable value of an object quotient (quantitative assessment of changes to the object) to update the object or that only updated portions of a Web page are downloaded (Column 7, lines 33-50)" (Answer 11-12). The Examiner finds that "[s]ince Greer discloses enabling one or more objects including Ad Banner, GIF, Button (Figure 9, 620, Object 1, 2, 3, 4, 5, of [sic, or] 6) of the Web page

(Figure 9, 602,) then Greer meets the claimed 'only updated portions of a Web page corresponding to a virtual channel are downloaded" (Answer 11).

Appellants respond that the Examiner has not explained how "enabling one or more objects of the Web page" equals downloading only the updated portions of a page and has not identified where Greer discloses that only updated portions of Web pages are updated (Reply Br. 2).

We agree with Appellants. Greer applies a global quotient to determine when to download an entire Web page, and that the global quotient field 306 (Figure 4) can be based on object quotient fields 328 which specify the magnitude of change of the particular object (ad banner, GIF, multimedia, text, frame, button) since the last update (Answer 11-12). *See* Greer, col. 3, l. 40 to col. 4, l. 32. The user can determine what magnitude and categorical nature of the change will trigger a change alert (Figure 9, col. 8, ll. 1-22) or the page can simply be downloaded in addition to or in lieu of notifying the user (col. 8, ll. 63-67). However, we find nothing that suggests that only a portion of the Web page is downloaded. Therefore, the rejection of claims 1, 3, 4, and 6 is reversed. Claim 5 stands or falls with claims 4/1 and the rejection of claim 5 is reversed.

Comment on claim 1

The Specification describes downloading only the changed portions of a Web site (page 11), but does not describe how this is accomplished. This is not a trivial matter because not only would one have to keep track of the objects, as in Greer, but one would have to know how to request only those

portions that have changed from the Web site. Since the Specification provides no details of how to download only the changed portions of a Web site, it must be assumed that one of ordinary skill in the computer art possessed the required knowledge to implement this feature or Appellants' own disclosure would be nonenabling. *See In re Epstein*, 32 F.3d 1559, 1568, 31 USPQ2d 1817, 1823 (Fed. Cir. 1994) ("Rather, the Board's observation that appellant did not provide the type of detail in his specification that he now argues is necessary in prior art references supports the Board's finding that one skilled in the art would have known how to implement the features of the references and would have concluded that the reference disclosures would have been enabling."); *In re Fox*, 471 F.2d 1405, 1407, 176 USPQ 340, 341 (CCPA 1973) (appellant's specification "assumes anyone desiring to carry out the process would know of the equipment and techniques to be used, none being specifically described"); *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1569, 7 USPQ2d 1057, 1063 (Fed. Cir. 1988) ("The disclosure in Exhibit 5 is at least of the same level of technical detail as the disclosure in the '491 patent. If disclosure of a computer program is essential for an anticipating reference, then the disclosure in the '491 patent would fail to satisfy the enablement requirement of 35 U.S.C. § 112, First ¶.").

Claims 15-22

Claim 15 has not been separately argued. Whereas claim 1 recites "in the event of an update [of the virtual channels], ***only updated portions*** of a

Web page corresponding to the virtual channel ***are downloaded***," claim 15 recites that "the microprocessor . . . determines whether the memory system stores a latest version of the virtual channel and if so causes ***at least updated portions*** of a Web page associated with the virtual channel automatically to be ***downloaded***." Claim 15 does not preclude downloading the whole Web page and, thus, Appellants' arguments with respect to claim 1 do not apply to claim 15. Arguments not made are waived. The rejection of claims 15-20 and 22 is affirmed. Claim 21 has not been separately argued and stands or falls with claim 15. The rejection of claim 21 is affirmed.

CONCLUSION

The rejections of claims 7-22 are affirmed.

The rejections of claims 1 and 3-6 are reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2006).

AFFIRMED-IN-PART

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